

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL S. MAPES, MILTON)
PETERSEN IV, DAVID MOHR, and)
DAVID STADING,) 8:07CV77
)
Plaintiffs,)
)
v.) MEMORANDUM AND ORDER
WELLINGTON CAPITAL GROUP,)
INC.,)
)
Defendant.)

)

This matter is before the court on defendant's appeal, Filing No. 50, of the magistrate's order, Filing No. 48, denying, in part, defendant Wellington Capital Group's ("Wellington") Motion to Quash the deposition notice of Frank Amodeo, Filing No. 40, and requiring Wellington to make Mr. Amodeo available for a deposition in Omaha, Nebraska. Wellington was ordered to make Mr. Amodeo available for his deposition within thirty days of the order. Filing No. 48, Order at 8. The subsequent notice of deposition has been stayed pending resolution of this appeal. Filing No. 51.

The magistrate judge ordered Amodeo's deposition in Omaha as a sanction against the defendant, finding "the defendant's motion was not substantially justified with regard to Mr. Amodeo." Filing No. 48, Order at 7. Wellington asserts that the magistrate judge's order is contrary to law.

On review of a decision of the magistrate judge on a pretrial matter, the district court may set aside any part of the magistrate judge's order that it finds is clearly erroneous or contrary to law. 28 U.S.C. § 636 (b)(1)(A); Fed. R. Civ. P. 72(a); *In re Lane*, 801 F.2d

1040, 1042 (8th Cir. 1986). See also *Bialas v. Greyhound Lines, Inc.*, 59 F.3d 759, 764 (8th Cir. 1995) (noting “a magistrate is afforded broad discretion in the resolution of nondispositive discovery disputes”). Based on his familiarity with the case, the magistrate judge was within his discretion to order Mr. Amodeo’s deposition in accordance with the notice of deposition. See generally 8 C. Wright & A. Miller, *Federal Practice and Procedure* §§ 2111-2112 (noting that the court has discretion to establish the time and place of a deposition). Defendant has not shown that the magistrate judge’s findings are clearly erroneous or contrary to law. Accordingly,

IT IS ORDERED:

1. The order of the magistrate judge, Filing No. 48, is affirmed;
2. Defendant’s appeal, Filing No. 50, of the order of the magistrate judge is dismissed;
3. The defendant shall make Mr. Amodeo available for deposition upon notice of the plaintiffs within thirty days of the date of this order.

DATED this 5th day of May, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge